

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 04-80370

v.

D-18, NASSIB SAADALLAH BERRO,

Hon. John Corbett O'Meara

Defendant.

ORDER DENYING DEFENDANT'S MOTION FOR RESENTENCING

Before the court is Defendant's motion for resentencing and for release due to medical condition, filed September 12, 2007. The government filed a response on December 11, 2007.

Defendant was sentenced to 41 months in prison on December 12, 2006. The judgment was entered on December 18, 2006. Defendant has appealed; the appeal is pending. Defendant requests that the court modify his sentence to a non-custodial sentence due to his medical condition.

The court does not have the authority to grant Defendant's request under the circumstances. See 18 U.S.C. § 3582(b). A sentence may be modified after a final judgment has been entered if (1) the Director of the Bureau of Prisons files a motion pursuant to 18 U.S.C. § 3582(c); (2) an "arithmetical, technical, or other clear error" needs correction pursuant to Fed. R. Civ. P. 35(a); (3) the government makes a motion for a reduction in sentence for substantial assistance, pursuant to Fed. Rule Civ. P. 35(b); (4) as a result of an appeal; or (5) if the Sentencing Commission retroactively amends the sentencing guidelines applicable to the defendant's sentence. See 18 U.S.C. § 3582(b), (c); Fed. R. Civ. P. 35. None of these

circumstances is applicable here. The court lacks jurisdiction to reconsider its interpretation of the sentencing guidelines or 18 U.S.C. § 3553(a). See United States v. Durham, 178 F.3d 796 (6th Cir.), cert. denied, 528 U.S. 1033 (1999) (“Because the district court did not impose Durham’s sentence in error, it correctly found that it had no jurisdiction to reconsider the sentence.”).

Accordingly, IT IS HEREBY ORDERED that Defendant’s September 12, 2007 motion for resentencing is DENIED.

s/John Corbett O’Meara
United States District Judge

Date: December 14, 2007

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, December 14, 2007, by electronic and/or ordinary mail.

s/William Barkholz
Case Manager